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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5745 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SABBIR SAFKATHUSEN KANTAWALA

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:

1. Special Civil Application No. 5745 of 1998

MR PN BAVISHI for Petitioner No. 1

Mr. PD Bhate, AGP for respondent No.1.

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 22/12/2004

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent No.1, Chief Revenue Controlling Authority, State of Gujarat dated 23rd September 1997 in Appeal No.

168/97 in dismissing the same and confirming the order passed by the respondent No.2 dated 30th October 1996 by which the Deputy Collector, Stamp Duty Valuation, Bharuch, in exercise of powers under Section 32-A of the Act has passed the order directing the petitioner to pay an amount of Rs. 80,270 being deficit stamp duty and Rs. 250 by way of penalty.

2. The petitioner purchased the property in question by registered sale deed dated 25.8.92 and the same was presented before the Sub-Registrar, Bharuch, which was registered bearing Registration No. 2819. It appears that the Sub-Registrar, Bharuch was of the opinion that the document in question is undervalued and proper stamp duty is not paid he referred the document to respondent No.2 for determining the market value of the property under Section 32-A of the Act. Notice under Rule 4 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 came to be issued on 16th March 1995. The petitioner submitted his reply on 27th March 1996 stating that the property in question is not in a developed area and that the property is very old and requested to consider the same. The respondent No.2 by order dated 30th October 1996 determined the market value of the property in question at Rs. 3,44,793 and thereby directed the petitioner to pay an amount of Rs. 80,270 by way of deficit stamp duty and Rs. 250/- by way of penalty by partly accepting the submission made on behalf of the petitioner, however, observing that the petitioner has not produced any other evidence.

3. Being aggrieved and dissatisfied with the aforesaid order, the petitioner preferred an appeal under Section 32-B of the Act before the respondent No.1 being Appeal No. 168/97 and the respondent No.1 Chief Revenue Controlling Authority, State of Gujarat by his judgment and order dated 23rd September 1997 dismissed the said appeal by narrating the facts and stating that considering the order passed by the Deputy Collector the submission made on behalf of the petitioner is required to be accepted. Being aggrieved and dissatisfied with the said order dated 23rd September 1997 passed by the respondent No.1 in Appeal No. 168/97 in dismissing the same the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

4. Shri PN Bavishi, learned advocate appearing on behalf of the petitioner has submitted that apart from the fact that the market value of the property is not properly fixed by both the authorities below, the

respondent No.1 has passed the order in a cyclostyled form wherein some gaps were filled-in and some sentences are added and the said order is passed without proper application of mind and it is a non-speaking order. Mr. Bavishi, ld. advocate has relied upon the judgment of this Court in the case of Pradyumanbhai Mohanlal Patel Vs. State of Gujarat & Ors., reported in 2003(1) GLR Page 454, by which the learned Single Judge of this Court, in the identical case wherein the very authority has passed a similar order, has set aside the said order and has remanded the matter back to the respondent No.1 for passing a fresh order.

5. Shri PD Bhate, learned AGP who appears on behalf of the respondent, has submitted that considering the submissions made on behalf of the petitioner and on consideration of the order passed by the Deputy Collector, the appellate authority has dismissed the appeal which is just and proper and therefore requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing for the parties. On bare reading of the order passed by the respondent No.1, it appears that no reasons have been assigned by the respondent No.1 while rejecting the appeal and not accepting the submissions made on behalf of the petitioner. The case on hand is directly covered by the judgment of this Court in the case of Pradyumanbhai Mohanlal Patel [supra]. Considering the fact that the impugned order is a non-speaking order which is in cyclostyled form and more particularly considering the fact that before operative portion of the order it is stated by the respondent No.1 after narrating the submissions that the order passed by the Deputy Collector is required to be quashed and set aside and still he has dismissed the entire appeal, the impugned order passed by the respondent No.1 reflects clear cut non-application of mind and the same requires to be quashed and set aside.

7. For the reasons stated hereinabove, the petition is allowed. The order passed by the appellate authority, i.e. respondent No.1 dated 23rd September 1997 passed in Appeal No. 168/97 is hereby quashed and set aside and the matter is remanded to the respondent No.1 for passing a speaking order afresh in accordance with law and on merits and after giving an opportunity to the petitioner as well as to the concerned authority. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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